

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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IN RE: SCHWINDEL, DEBRA ANN

CHAPTER 7  
BKY CASE NO. 03-45421

Debtor(s).

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**NOTICE OF HEARING AND MOTION FOR TURNOVER OF PROPERTY**

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TO: Entities specified in Local Rule 9013-3.

1. Terri A. Georgen-Running, trustee (the "Trustee") of the bankruptcy estate of the above-named Debtor(s) moves the Court for the relief requested below and gives notice of hearing.

2. A hearing will be held on this motion by the Honorable Nancy C. Dreher, Courtroom No. 7 West, 7<sup>th</sup> Floor, 300 S. 4<sup>th</sup> Street, Minneapolis, Minnesota on November 3, 2004 at 10:30 a.m., or as soon thereafter as counsel may be heard.

3. Any response to this motion must be delivered and filed not later than October 27, 2004, which is seven (7) days, **including** intermediate Saturdays, Sundays, and legal holidays, before the hearing date, or shall be mailed and filed not later than October 22, 2004, which is ten (10) days before the hearing date. **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, FED. R. BANKR. P. 5005 and Local Rule 1070-1. This is a core proceeding.

The petition commencing this Chapter 7 case was filed on 07/31/03 and is now pending before this court. The Debtor(s) received a discharge on 11/03/03.

5. This motion arises under 11 U.S.C. §542(a), FED. R. BANKR. P. 9013 and Local Rule 6072-1. This motion is filed under FED. R. BANKR. P. 9014 and Local Rules 9001-1 to 9001-6 and 9013-1 to 9013-5. The Trustee requests turnover of the following non-exempt asset(s), or the value thereof, (“Non-Exempt Assets”) and/or documentation (“Documentation”) in order to properly administer the bankruptcy estate: copies of 2003 federal, state and property tax returns.

6. The Trustee has requested several times that the Debtor turnover the Non-Non-Exempt Asset(s) and/or Documentation but the Debtor(s) have failed to comply with the Trustee’s requests.

7. Because the Debtor(s) have failed to turnover the Non-Exempt Asset(s) and/or Documentation the Trustee is unable to account for and administer all assets of the bankruptcy estate as required by 11 U.S.C. §704.

8. In order to ensure that the Debtor(s) comply with any order issued by the Court as a result of this motion in a timely manner, the Trustee requests that the order be specifically made applicable to revocation of the discharge under 11 U.S.C. §727(s)(6)(A) to allow the Trustee to pursue revocation under §727(d)(3) should the Debtor(s) fail to promptly comply with its provisions.

WHEREFORE, the Trustee moves the Court for an order:

1. Directing the Debtor(s) to turnover to the Trustee the following Non Exempt Asset(s) and/or Documentation or the value thereof within 10

days of the entry of an order granting the Trustee's Motion: copies of 2003 federal, state and property tax returns.

2. Directing that the failure to comply with the order of this Court requiring a turnover provided for herein be grounds for revocation of discharge under 11 U.S.C. §727(a)(6)(A); and
3. For such other relief as may be just and equitable.

Dated: October 2, 2004

GEORGEN-RUNNING LAW FIRM  
*A Professional Corporation*

By: /e/ Terri A. Georgen-Running  
Terri A. Georgen-Running (No. 238338)  
P.O. Box 16355  
St. Paul, MN 55116

(651) 699-6980  
(651) 292-1234 *Facsimile*

ATTORNEYS FOR THE TRUSTEE

**VERIFICATION.**

I, Terri A. Georgen-Running, the moving party in the foregoing notice of hearing and motion, declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Dated: October 2, 2004

/e/ Terri A. Georgen-Running  
Terri A. Georgen-Running, Trustee

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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**MEMORANDUM OF LAW IN SUPPORT OF  
MOTION FOR TURNOVER OF PROPERTY**

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**INTRODUCTION**

Terri A. Georgen-Running, Chapter 7 trustee for the above captioned case (the “Trustee”) respectfully submits this memorandum of law in support of her motion for turnover of property (the “Motion”).

**FACTS**

The facts set forth in the Motion for Turnover are incorporated by reference.

**LEGAL ANALYSIS**

**I. THE DEBTORS MUST TURNOVER THE INFORMATION REQUESTED BY THE TRUSTEE.**

Bankruptcy debtors receive a substantial benefit when relieved of personal liability for repayment of unsecured obligations through discharge. In achieving a balance between the rights of debtors and their creditors, Congress has determined that debtors have an affirmative duty to turn over information necessary to complete administration of the bankruptcy case. The Bankruptcy Code provide that:

The debtor shall:

(3) if a trustee is serving in the case, cooperate with the trustee as necessary to enable the trustee to perform the trustee’s duties under this title;

(4) if a trustee is serving in the case, surrender to the trustee all property of the estate and any recorded information, including books, documents, records, and papers, relating to property of the estate, whether or not immunity is granted under section 344 of this title;

11 U.S.C. §§521(3) and (4). The law interpreting these sections of the Bankruptcy Code is well settled concerning a debtor's affirmative obligation to cooperate with the trustee and supply necessary information for case administration. *See In re: Lange*, 110 B.R. 907, 909 (Bankr. D. Minn. 1990); *In re: Bently*, 120 B.R. 712, 715 (Bankr. S.D.N.Y. 1990) and *In re: Ridley*, 115 B.R. 731, 736 (Bankr. D. Mass. 1990).

Because the Debtor(s) have failed to turnover property of the estate and to supply necessary documentation and information, administration of this estate is being delayed. The Trustee is entitled to an order requiring that the Debtor(s) to turnover property of the estate and to provide the documentation and information to that the Trustee can determine what interest the estate has in certain assets and whether all of the Debtor(s)' assets were properly scheduled.

## **II. FAILURE TO COMPLY WITH AN ORDER FOR TURNOVER IS GROUNDS FOR REVOCATION OF DISCHARGE.**

Under the Bankruptcy Code, provides that if a debtor refuses to comply with court orders, a discharge may be revoked. 11 U.S.C. §§727(a)(6); 727(d). The Trustee requests that if the Trustee's Motion is granted, the terms of the order constitute a lawful order of the court under 727(a)(6)(A), so that failure to comply with the order shall constitute grounds for revocation of discharge under 11 U.S.C. §727(a)(6)(A). This will provide an incentive for the Debtor(s) to perform with the court's order in a timely manner.

## **CONCLUSION**

For the foregoing reasons, the Trustee requests that the Court grant The Trustee's Motion for Turnover, and directing that the failure to comply with the order of this Court requiring such turnover be grounds for revocation of discharge under 11 U.S.C. §727(a)(6)(A);

Dated: October 2, 2004

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ATTORNEYS FOR THE TRUSTEE

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**UNSWORN DECLARATION FOR PROOF OF SERVICE**

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I, Terri A. Georgen-Running, declare under penalty of perjury that on the date indicated below, I served the following:

(1) Notice of Hearing and Motion for Turnover of Property; (2) Memorandum of Law In Support of Motion for Turnover of Property; (3) Unsworn Declaration for Proof of Service; and (4) Proposed Order

upon each of the entities named below, by mail (unless otherwise indicated below) by mailing to each of them a copy thereof by enclosing same in an envelope with first class mail postage prepaid, and depositing same in the post office at St. Paul, Minnesota, addressed to each of them as follows:

UNITED STATES TRUSTEE  
1015 U.S. COURTHOUSE  
300 SOUTH FORTH STREET  
MINNEAPOLIS, MN 55415

SCHWINDEL, DEBRA ANN  
141 36TH AVE N  
SAINT CLOUD, MN 56303-4043

STEPHEN L. HELLER, ESQ.  
606 25TH AVENUE S. STE 110  
ST. CLOUD, MN 56301

Date: October 2, 2004

/e/ Terri A. Georgen-Running

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**ORDER**

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At Minneapolis, MN, \_\_\_\_\_, 2004

The above-entitled matter came before the Court on the Motion for Turnover of Property filed by the Trustee. Appearances, if any, were as noted upon the record. Based upon all the files, records and proceedings herein,

**IT IS HEREBY ORDERED:**

1. The Debtors shall turnover to the Trustee the following non-exempt asset(s) and/or documentation or the value thereof within 10 days of the entry of this order: copies of 2003 federal, state and property tax returns.
2. That failure to comply with this order shall be grounds for revocation of discharge under 11 U.S.C. §727(a)(6)(A).

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Honorable Nancy C. Dreher  
UNITED STATES BANKRUPTCY JUDGE